

# **Application to vary the Premises Licence in respect of the Queens Tap, 74 Station Road, Swindon SN1 1DG**

**Licensing Panel**

**Date: 1 July 2013**

**Author: Licensing Manager**

**Wards Affected: Central**

## **Purpose**

- To consider representations received in respect of an application to vary the Premises Licence at the Queens Tap, 74 Station Road, Swindon SN1 1DG.

## **Recommendation**

The Licensing Committee is asked to, in light of the representations received from the Environmental Health Department and 'other persons', to determine the application. The options available to the Committee are:

- To grant the application in its current form with conditions consistent with the operating schedule;
- To grant the application, but to modify the conditions by amending, altering or attaching new conditions; or
- To reject the application in whole or in part.

## **1. Reasons**

- 1.1 The Licensing Panel has a statutory duty to undertake the functions of the Licensing Authority, where these have been delegated by the Licensing Committee.

## **2. Summary of the application**

- 2.1 An application to vary the Premises Licence in respect of the Queens Tap, Swindon has been received from Punch Taverns Plc, Jubilee House Second Avenue, Burton upon Trent.
- 2.2 A copy of the application is attached as Appendix A
- 2.3 The application seeks the following:
  - Provision of live music between the hours of 08.00 and 00.00 Monday to Wednesday and between the hours of 08.00 and 02.00 Thursday to Saturday;
  - Provision of recorded music between the hours of 08.00 and 00.00 Monday to Wednesday and between the hours of 08.00 and 02.00 Thursday to Saturday;

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- Anything similar to that falling within (e), (f) or (g) between the hours of 08.00 and 00.00 Monday to Wednesday and between the hours of 08.00 and 02.00 Thursday to Saturday;
- Supply of alcohol between the hours of 08.00 and 00.00 Monday to Wednesday and between the hours of 08.00 and 02.00 Thursday to Saturday;
- Hours of opening between the hours of 08.00 and 00.30 Monday to Wednesday and between the hours of 08.00 and 02.30 Thursday to Saturday;
- To remove the condition in Annex 2 of the current licence which reads, 'Plays, films, indoor spectator sports, boxing, wrestling and the performance of dance are not permitted'.
- No change to Sunday permissions

2.4 The applicant has also offered to add conditions to the licence should the variation be granted. These conditions are detailed in part M of the application.

2.5 The current Premises Licence authorises the following:

- Regulated entertainment, (excluding plays, films, indoor sporting events, boxing and performance of dance), between the hours of 11.00 until 23.00 Monday to Wednesday and between the hours of 11.00 and 00.00 Thursday to Saturday;
- Supply of alcohol between the hours of 11.00 until 23.00 Monday to Wednesday and between the hours of 11.00 and 00.00 Thursday to Saturday;

2.6 The application was received on May 2013 and was circulated to all the responsible Authorities and advertised in accordance with the regulations. The last date for representations to be received was 10 June 2013.

2.7 A representation has been received from Environmental Health Department, as in the opinion of Mr Damon Green, Environmental Protection Team Leader, should the variation be granted then it would undermine the Licensing Objective in respect of the prevention of public nuisance. A copy of this representation is attached as Appendix B.

2.8 A representation has also been received from a resident living in close proximity to the premises stating that loud music was already causing disturbance and should the variation be granted would undermine the Licensing Objective in respect of public nuisance. A copy of the representation is attached as Appendix C

## **3. Background and history of premises**

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- 3.1 The premises is located in the Central Ward of Swindon directly opposite the railway station in Swindon. There is another public house on the opposite corner of the road to the Queens Tap.
- 3.2 The premises is currently licence and has held the Premises Licence since 2006.
- 3.3 There is currently one open complaint in respect of noise
- 3.4 A copy of the current Premises Licence is attached as Appendix D

## **4. Relevant Considerations**

- 4.1 The Licensing Act 2003 states that the licensing authority can only consider representations if they are relevant to one of the Government's four licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

- 4.2 The Panel is requested to consider the application for variation of premises licence on its merits.

(II) Subject to paragraph (III) below, Section 35(2) of the Licensing Act 2003 provides that the Sub-Committee must grant the application.

(III) Having regard to the representations made by the interested parties, the Sub-Committee must take such steps (if any) as it considers necessary for the promotion of the licensing objectives. The steps are:

- To modify the conditions of the licence, whether by alteration or omission of conditions or the addition of new conditions. Any additional or altered conditions must be necessary for the promotion of the licensing objectives, proportionate and should address the matters raised in the representations. Additionally conditions can be imposed that are consistent with the steps set out in the operating schedule.
- To reject the application in whole or in part.

## **5. Human Rights Act 1998**

- 5.1 The Human Rights Act provides that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to

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Further information on the subject of this report can be obtained from Kathryn Ashton on 01793 466113 or e-mail [kashton@swindon.gov.uk](mailto:kashton@swindon.gov.uk).

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secure the payment of taxes or other contributions or penalties.” The term “possession” includes a Licence as well as a home and the things it contains.

5.2 The Act further provides:

” (1) it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if-

as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.”

5.3 However, it is recognised that the Council's Statement of Licensing Policy and Statutory Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Therefore subject to both the Policy and Guidance having been properly and carefully considered, licensing authorities may depart from them if they have a justifiable reason to do so. If doing so, licensing authorities will need to give full reasons for their actions.

## **6 Legal Considerations**

6.1 A Premises Licence lasts for the lifetime of the business, unless it lapses due to the death or insolvency of the licence holder, is surrendered by the applicant, is suspended, or is revoked.

6.2 However, the Government have introduced a review mechanism where licensed premises are found to be contravening one of the licensing objectives.

6.3 The Statutory Guidance issued under section 182 of the Licensing Act states at 11.2, “At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.”

6.4 The applicant for review, holder of the Premises Licence, or any other person who made relevant representations to the application may appeal against the Council's decision to the Magistrates Court within 21 days beginning with the day on which the appellant was notified by the Council of the decision being appealed against.

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- 6.5 The decision of the Council, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of. Any interim steps taken will remain in force over these periods.
- 6.6 The Statutory Guidance under section 182 of the Licensing Act 2003 states at 12.10 "It is important that licensing authorities should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of licensing policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

## Alternative Options

It would be possible to defer a decision or to defer the hearing itself to a later date but either step should be seen as an exceptional measure

## Risk Management

### *Financial and Procurement Implications*

There are no direct financial implications arising from the report. Failure to reach a reasonable conclusion, based on the facts, could lead to breach of the licensing objectives or to unwarranted damage to the business in question. Either scenario could raise issues of compensation. In the case of an appeal, the Council could become liable for costs. The Council provides training for Members who sit on the Licensing Committee, as one of the measures to mitigate financial risk.

*Legal / Human Rights Implications* A declaration has been made by the Secretary of State, that the Licensing Act is compliant with the Human Rights Act.

### *Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)*

The determination of the application will be made in accordance with set legal principles. The exercise of licensing powers by the Panel relates particularly to the LAA outcome of reducing crime and the fear of crime.

## Background Papers and Appendices

Appendix A	Application to vary Premises Licence
Appendix B	Representation received from Environmental Health
Appendix C	Representation received from resident
Appendix D	Copy of the current Premises Licence

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